

INDIANA POLICY
UNDER THE
UNSAFE SCHOOL CHOICE OPTION
NO CHILD LEFT BEHIND ACT OF 2001

The Elementary and Secondary Schools Act (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), requires public schools that receive federal funds under ESEA to allow a student to transfer from an unsafe school. The statutory language in its entirety is as follows:

SEC. 9532 [20 U.S.C. § 7912] UNSAFE SCHOOL CHOICE OPTION.

(a) UNSAFE SCHOOL CHOICE POLICY – Each State receiving funds under this Act shall establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school, as determined by the State in consultation with a representative sample of local educational agencies, or who becomes a victim of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary school or secondary school that the student attends, be allowed to attend a safe public elementary school or secondary school within the local educational agency, including a public charter school.

(b) CERTIFICATION – As a condition of receiving funds under this Act, a State shall certify in writing to the Secretary [of Education] that the State is in compliance with this section.

Indiana must certify by July 1, 2003, that it has established and implemented the Unsafe School Choice Option (USCO). In accordance, the following policy is established and certified by the Office of the Superintendent of Public Instruction. All public school corporations must provide an assurance in their applications for NCLB funds that they are in compliance with this policy.

Section 1. Persistently Dangerous School.

A public school in Indiana is a persistently dangerous school if the school is confirmed to be persistently dangerous by a review panel after the following is met for three (3) consecutive years:

More than two percent (2%) of the students enrolled in the school are convicted of any of the following or determined to have committed an act of delinquency that would, if committed by an adult, constitute any of the following:

- (1) A violent crime as defined by IC 5-2-6.1-8.
- (2) Possession of any of the following:
 - (A) A firearm, as defined by IC 35-47-1-5;
 - (B) A deadly weapon, as defined by IC 35-41-1-8; or
 - (C) A destructive device, as defined by IC 35-47.5-2-4.

For purposes of this policy, a conviction or act of delinquency is included in determining if a school is persistently dangerous only if the conduct that results in the conviction or determination of delinquency occurs:

- (1) in or on the grounds of the public school that the student attends immediately before school

hours, during school hours, or immediately after school hours;

(2) off school grounds at an activity, function, or event sponsored by the school the student attends;
or

(3) while traveling to or from school or a school activity, function, or event on school-provided transportation.

For the 2002-2003 school year, in the absence of crime data, a public school in Indiana is a persistently dangerous school if the school is confirmed to be persistently dangerous by a review panel after either of the following criteria is met for three (3) consecutive years:

More than two percent (2%) of the students enrolled in the school are expelled for the maximum period permitted by law for conduct that constitutes any of the following:

(1) A violent crime as defined by IC 5-2-6.1-8.

(2) Possession of any of the following:

(A) A firearm, as defined by IC 35-47-1-5;

(B) A deadly weapon, as defined by IC 35-41-1-8; or

(C) A destructive device, as defined by IC 35-47.5-2-4.

For the 2003-2004 school year, two years of expulsion data and one year of conviction and delinquency data shall be used to determine if a school is persistently dangerous. For the 2004-2005 school year, one year of expulsion data and two years of conviction and delinquency data shall be used to determine if a school is persistently dangerous.

A student enrolled in a public school that has been determined to be persistently dangerous shall be allowed to transfer to a safe school within the school corporation, including a public charter school. A school corporation may not prevent a transfer to a charter school by filing an appeal under IC 20-5.5-5-1. A transfer remains in effect as long as the assigned school is designated as persistently dangerous.

School corporations must adopt local policies and procedures that are consistent with this policy. Local policies should include the following components:

(1) the plan for notifying parents of their options to transfer; and

(2) the procedures for initiating the transfers, generally within 30 school days from the time that the school is designated as persistently dangerous.

A school that meets the persistently dangerous school criteria for two consecutive years will be put on watch status. The Indiana Department of Education will provide technical assistance as requested to help the school address school safety issues. A school on watch status will be required to submit expulsion and crime victim data to the Department of Education on a monthly basis.

If the persistently dangerous school criteria are met for a third consecutive year, a panel consisting of local and state school safety experts shall be convened to make the determination as to whether the school should be considered persistently dangerous.

The panel consists of the following five (5) members:

(1) a School Safety Specialist from a school corporation other than the school corporation that

includes the school being considered, who shall be appointed by the school corporation that includes the school being considered;

(2) three (3) School Safety Specialists from school corporations other than the school corporation that includes the school being considered, who shall be appointed by the Department of Education.

(3) the chair of the panel, who shall be a member of the Indiana School Safety Specialist Advisory Council appointed by the Chair of the Advisory Council.

The panel will consider any evidence, including extenuating circumstances, presented by school officials before rendering a decision. A determination by the panel is the final administration decision under this policy.

A school designated as persistently dangerous must amend its School Safety Plan by adding a corrective action plan that addresses the cause(s) for the school's identification as a persistently dangerous school. The school shall submit the plan for approval by the Department of Education. The Department of Education shall provide technical assistance, as needed, to develop the corrective action plan.

A school's designation as persistently dangerous will be removed after the school does not meet the criteria for identification as a persistently dangerous school for two (2) consecutive years.

A student who has transferred from a school no longer considered to be persistently dangerous loses the option to transfer. Local governing boards may include in their policies the option of allowing a student to continue attending the school to which the student transferred.

School corporations are encouraged to enter into agreements, pursuant to IC 20-8.1-6.1-8(h), with neighboring school corporations for transfers to the neighboring corporation where there is no choice of schools within the corporation of legal settlement because there is no other school at the particular grade level, no safe school at the particular grade level, or no space at a safe school at the particular grade level. Such an agreement may include a method for determining the amount of transfer tuition, if any, which shall be paid to the neighboring school corporation.

In the case of a transfer to another school corporation, the corporation of legal settlement may provide financial assistance to a family to cover transfer costs. Safe and Drug-Free Schools funds (Title IV, Part A) may be used for transportation, and Title V, Part A, funds may be used to help defray the cost of transportation and tuition.

Section 2. Victim of Violent Criminal Offense

For the purposes of this policy, a victim of a violent criminal offense is a student who is a victim of a violent crime as defined by IC 5-2-6.1-8, or an act of delinquency that would be a violent crime if committed by an adult, that occurs:

(1) in or on the grounds of the public school that the student attends immediately before school hours, during school hours, or immediately after school hours;

(2) off school grounds at an activity, function, or event sponsored by the school the student attends;
or

(3) while traveling to or from school or a school activity, function, or event on school-provided transportation.

A student who has been charged with a crime or act of delinquency arising out of the same occurrence is not a victim.

A student who is a victim of a violent criminal offense, as defined by this policy, shall be allowed to transfer to another safe school in the corporation, including a public charter school.

A corporation shall consider a student eligible for a transfer under this section if substantial and reliable evidence indicates that the student was a victim of a violent criminal offense. If a corporation refuses to offer a transfer to a parent of a student whom the parent believes was the victim of a violent criminal offense, the parent may appeal to the department. The review panel created in Section 1 of this policy shall determine if the student is eligible for a transfer. The panel may use the existing record or may hear additional evidence. A determination by the panel is the final administrative decision under this policy. A determination has no preclusive effect in any other legal proceeding.

School corporations must develop policies and procedures that are consistent with this policy. Local corporation policies should include the following components:

- (1) the procedure for notifying parents and students, beginning with the start of the 2003-04 school year, of their transfer option(s) under the individual option;
- (2) the policies and procedures for making a determination that a crime has occurred;
- (3) the procedure for implementing the transfer in a timely manner, generally within 10 days of the victimization; and
- (4) the policies regarding the length of transfer.

In most cases, a transfer will be in effect until the student reaches the highest grade level at the new school. When transfers occur at the elementary school and junior high/middle school levels and the school corporation has a “feeder system,” local policies should address the issue of where in the feeder system the student should be placed at the next level.

School corporations are encouraged to enter into agreements, pursuant to IC 20-8.1-6.1-8(h), with neighboring school corporations for transfers to the neighboring corporation where there is no choice of schools within the corporation of legal settlement because there is no other school at the particular grade level, no safe school at the particular grade level, or no space at a safe school at the particular grade level. Such an agreement may include a method for determining the amount of transfer tuition, if any, which shall be paid to the neighboring school corporation.

In the case of a transfer to another school corporation, the corporation of legal settlement may provide financial assistance to a family to cover transfer costs. Safe and Drug-Free Schools funds (Title IV, Part A) may be used for transportation, and Title V, Part A, funds may be used to help defray the cost of transportation and tuition.

Reporting

Schools shall report:

- (1) expulsions of students enrolled in the school for possession of a firearm, deadly weapon, or destructive device; and

(2) numbers of students who exercise the crime victim individual option;
as requested by the Department of Education on forms or through electronic means provided by the
Department.

Adopted: April 30, 2003

[Signed]

Dr. Suellen Reed
Superintendent of
Public Instruction

IC 5-2-6.1-8
Violent crime

Sec. 8. As used in this chapter, "violent crime" means the following:

(1) A crime under the Indiana Code that is a felony of any kind or a Class A misdemeanor that results in bodily injury or death to the victim but does not include any of the following:

(A) A crime under IC 9-30-5 resulting from the operation of a vehicle other than a motor vehicle.

(B) Involuntary manslaughter resulting from the operation of a motor vehicle by a person who was not intoxicated (IC 35-42-1-4).

(C) Reckless homicide resulting from the operation of a motor vehicle by a person who was not intoxicated (IC 35-42-1-5).

(D) Criminal recklessness involving the use of a motor vehicle, unless the offense was intentional or the person using the motor vehicle was intoxicated (IC 35-42-2-2).

(2) A crime in another jurisdiction in which the elements of the crime are substantially similar to the elements of a crime that, if the crime results in death or bodily injury to the victim, would be a felony or a Class A misdemeanor if committed in Indiana. However, the term does not include any of the following:

(A) A crime in another jurisdiction resulting from operating a vehicle, other than a motor vehicle, while intoxicated.

(B) A crime in another jurisdiction with elements substantially similar to involuntary manslaughter resulting from the operation of a motor vehicle if the crime was committed by a person who was not intoxicated.

(C) A crime in another jurisdiction with elements substantially similar to reckless homicide resulting from the operation of a motor vehicle if the crime was committed by a person who was not intoxicated.

(D) A crime in another jurisdiction with elements substantially similar to criminal recklessness involving the use of a motor vehicle unless the offense was intentional or the person using the motor vehicle was intoxicated.

(3) A terrorist act.

As added by P.L.47-1993, SEC.2. Amended by P.L.36-1997, SEC.3.